

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

IN RE:)
)
EASTERN LIVESTOCK CO., LLC,) Case No. 10-93904-BHL-11
)
Debtor.) Hon. Basil H. Lorch III

**TRUSTEE'S MOTION TO APPROVE COMPROMISE AND SETTLEMENT
WITH SHASTA LIVESTOCK AUCTION YARD, INC.**

Pursuant to Federal Rule of Bankruptcy Procedure 9019, James A. Knauer, as chapter 11 trustee ("Trustee") for the bankruptcy estate (the "Estate") of Eastern Livestock Co., LLC ("Debtor"), by counsel, respectfully moves the Court to approve the compromise and settlement of claims between the Trustee and Shasta Livestock Auction Yard, Inc. ("Shasta"). In support of this Settlement Motion, the Trustee states as follows:

Introduction and Background

1. Certain petitioning creditors commenced the above-captioned chapter 11 case ("Chapter 11 Case") on December 6, 2010 (the "Petition Date"). The Court entered the *Order For Relief in An Involuntary Case and Order to Complete Filing* [Docket No. 110] on December 28, 2010.

2. On December 27, 2010, the Court entered the *Order Approving the Appointment of James A. Knauer as Chapter 11 Trustee* [Docket No. 102] approving the *United States Trustee's Application for an Order Approving the Appointment of James A. Knauer as Chapter 11 Trustee* [Docket No. 98] pursuant to 11 U.S.C. § 1104.

3. Prior to the Chapter 11 Case, Debtor purchased cattle from Shasta pursuant to contract. The Debtor typically tendered payment to Shasta by check the first business day following delivery of the purchased cattle consistent with the Packers and

Stockyards Act. With respect to one transaction that occurred within 90 days of the Petition Date, Debtor tendered a check in the amount of \$545,925.96 for cattle delivered the previous day, but the check was either lost or misplaced. One week later, the Debtor issued a replacement check in the same amount as payment for the purchased cattle.

4. The Trustee contends that the payment by replacement check is a preferential transfer (the "Alleged Preference Claim"). Shasta raises several defenses, including its contention that the transfer is excepted from the avoidance powers of the Trustee as an ordinary course of business transaction under Section 547(c)(2), or as a transaction that falls within the safe harbor of Section 546(e) of the Bankruptcy Code.

5. Shasta is not a creditor of the Debtor. Shasta has not filed a Proof of Claim in the Chapter 11 Case.

The Settlement

6. The Trustee has negotiated a settlement of all disputes with Shasta on the terms set forth in the Settlement Agreement and Mutual Release attached hereto as Exhibit A ("Settlement Agreement"). Pursuant to the Settlement Agreement, Shasta agrees to pay to the Estate the total sum of \$37,500.00 ("Payment Amount") in settlement of the Alleged Preference Claim. The Settlement Agreement contains a mutual release by which Shasta waives all claims against the Debtor, the Estate, the Trustee, and the Trustee's professionals, including without limitation a waiver of any right to assert a claim under Section 502(h) of the Bankruptcy Code.

7. In accordance with the terms of the Plan, the Payment Amount shall become part of the Recovery Fund (as that term is defined in the Estate's confirmed Chapter 11 Plan).

Basis for Relief

8. Pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), this Court has authority to approve a compromise or settlement on motion made by the Trustee after notice and opportunity for a hearing.

9. Under Bankruptcy Rule 9019, a bankruptcy court should approve a proposed compromise if it is fair and equitable and in the best interests of the estate. See In re Doctors Hosp. of Hyde Park, Inc., 474 F.3d 421, 426 (7th Cir. 2007); Depoister v. Mary M. Holloway Found., 36 F.3d 582, 586 (7th Cir. 1994); Matter of Energy Co-op, Inc. 886 F.2d 921, 927 (7th Cir. 1989).

10. The Trustee believes that the compromise and settlement reflected in the proposed Settlement Agreement is fair and equitable and in the best interests of the Estate. The parties have exchanged confidential position statements on the points of law raised in connection with Shasta defenses to the Alleged Preference Claim. The Trustee and Shasta each believe that its position is correct and would prevail in litigation. However, a litigation alternative to settlement would result in significant expenses and delay and create the possibility of an outcome that would result in a smaller recovery to the estate.

11. If no objections to this Settlement Motion are filed, the Trustee requests that the Court enter an order approving the Settlement Agreement. If any objections to this Settlement Motion are filed, the Trustee requests that this Settlement Motion and any timely filed objection be scheduled for hearing by the Court on the earliest date that is available and convenient to the Court.

WHEREFORE, the Trustee respectfully requests that the Court enter an order approving the Settlement Agreement attached hereto as Exhibit A and grant the Trustee all other just and proper relief.

Respectfully submitted,

FAEGRE BAKER DANIELS LLP

By: /s/ Dustin R. DeNeal

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CERTIFICATE OF SERVICE

I hereby certify that on September 3, 2013, a copy of the foregoing pleading was filed electronically. Notice of this filing will be sent to the following parties through the Court's Electronic Case Filing System. Parties may access this filing through the Court's system.

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